

FLOYD AND ELSIE PATRIN

IBLA 84-70 Decided June 11, 1985

Appeal from a decision of Idaho State Office, Bureau of Land Management, declaring mining claims IMC 42498 through IMC 42535 null and void for failure to provide a description of the claims sufficient to locate the claimed lands.

Reversed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1982), and 43 CFR 3833.1-2 require that a mining claimant file with BLM a description of the location of the mining claim sufficient to locate the claimed lands. Where a mining claimant fails to provide such a description with the recordation of the claim, BLM may properly require the filing of such a description within a certain period of time. The failure by the mining claimant to comply with such a request may be considered grounds for declaring the claim abandoned and void in accordance with 43 CFR 3833.4; however, where the claimant provides a map, narrative, or sketch of sufficient detail to identify and locate the claims on the ground, it is improper to declare the claims abandoned and void.

APPEARANCES: Floyd and Elsie Patrin, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Floyd and Elsie Patrin appeal from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated September 16, 1983, declaring mining claims IMC 42498 through IMC 42535 located in the Nezperce National Forest null and void. In its decision, BLM found that appellants' mining claims "are considered abandoned and declared null and void for failure to give a description of the location of the mining claims sufficient to locate the claimed lands on the ground," citing 43 CFR 3833.1-2(c)(6) (1982).

The record in this case reveals a long history of attempts by BLM to secure what it deemed to be an adequate description of the claims at issue. The claims, all recorded on October 22, 1979, were located between 1925 and 1954. No map accompanied the recordation, although the Patrins generally described the location of the claims by township and range in an attached statement.

By letter dated February 27, 1981, BLM requested that the Patrins provide a map of their claims within 30 days of receipt of the letter. Apparently no map was filed and on April 28, 1981, BLM issued a decision requiring the filing of a map within 30 days, failing in which the claims would be declared void. This decision was returned to BLM with the indication that the Patrins refused delivery. On May 29, 1981, BLM issued an identical decision. The record shows receipt of this decision, and on July 6, 1981, Patrin filed a hand-drawn map or sketch of the claims.

Previous to this date the Forest Service had undertaken a minerals investigation of the 38 claims involved herein. From July 21 through 25, 1980, John C. Nichols, Forest Mining Geologist, and other Forest Service personnel conducted a field examination of the claims. The "Report on Mining Claim" (Report), signed by Nichols on April 30, 1981, sets forth the results of that examination. On page 10 of the Report Nichols stated: "The field exam indicated that there are no claim corners and boundaries identifiable as those belonging to the claimant, and no way to tie in any of the possible 38 lode and placer claims in this area filed on by the Patrins to specific geographic areas." ^{1/}

On March 23, 1982, Nichols executed an affidavit describing the July 1980 search for claim corners. Therein, Nichols stated, "The map filed in July 1981 with the BLM, by the Patrins, is very general and not detailed. It will also not help determine claim corner locations."

In May 1982 BLM again began to solicit information from Patrins concerning their claim locations. On May 19, 1982, BLM issued a decision stating the Forest Service was unable to locate the claim corners. BLM informed the Patrins that the failure to submit a map or narrative description sufficient to identify and locate the claims within 30 days would constitute an abandonment of the claims. The Patrins responded by letter, dated June 25, 1982, stating they would have the claims surveyed and would provide BLM with a plat as soon as ground conditions and weather permitted. By letter dated July 22,

^{1/} The provisions of Idaho Code § 47-606 (1984) provides that "the person in whose behalf such work or improvements is performed * * * must make and record an affidavit in substance as follows. * * * That * * * all stakes, monuments or trees marking boundaries of said claim are in proper place and position." The sworn proofs of labor filed with respect to the claims state "All stakes, monuments or trees marking boundaries of said claims are in proper place and position."

1982, BLM requested them to "advise us at your earliest convenience the date at which you anticipate the survey plat can be submitted to this office." The record contains no response from the Patrins.

On October 14, 1982, BLM issued a decision again allowing the Patrins 30 days to provide information sufficient to identify and locate the claims. On October 26, 1982, the Patrins orally sought an extension of time to comply. On November 8, 1982, they informed BLM they had engaged a surveyor to establish their claims. They indicated they would submit a written request for an extension of time to file a map and that the survey would be completed by January 1983. No extension was filed.

On February 8, 1983, BLM issued a decision requesting information regarding scheduling of the survey and the completion date of survey. BLM stated that if the information was not submitted within 30 days, the claims would be deemed null and void by reason of abandonment. On March 9, 1983, BLM received a letter from the Patrins stating the weather had been a problem and "this work as far as we are able will be completed this summer by July." By letter dated March 11, 1983, BLM informed them they would have "until September 1, 1983, in which to meet the requirements of 43 CFR 3833.1-2(c)(6) [(1982)], as set forth in the decision of May 19, 1982." In a letter received by BLM on September 2, 1983, the Patrins stated their surveyor was busy on another job, and they needed more time to comply. 2/

In its final decision, dated September 16, 1983, BLM declared the claims null and void after finding that neither the descriptions in the location notices nor the document filed by the Patrins on July 16, 1981, were sufficiently descriptive or accurate to locate the claims.

On appeal, appellants complain the notification they received concerning the July 1980 visit to the claims stated only that it was a mineral examination and that "there is no mention of claim corners." Appellants state when the men did appear on their claims in July 1980, they identified themselves as "FBI agents." Further, appellants question how detailed a map must be.

[1] The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1982), requires a mining claimant file with BLM "a description of the location of the mining claim sufficient to locate the claimed lands on the ground." 43 CFR 3833.1-2(b)(5) (1984) provides that: "For all claims or

2/ A memorandum to the file dated Oct. 14, 1983, by a BLM employee explained that the Patrin's request had been misdirected within BLM and had not been considered prior to the Sept. 16, 1983, decision. However, after considering the request, on Oct. 6, 1983, BLM informed Patrins by letter that an extension could not be granted, but that the Patrins could appeal. The record also contains a copy of a survey work order which the Patrins provided to BLM Oct. 7, 1983. The work order is dated Sept. 29, 1983, and establishes the estimated cost for surveying 46 mining claims (including the 38 claims at issue herein), the work to be completed between Oct. 15 and 25. Apparently the results of this survey, if completed, were not provided to BLM.

sites a description shall be furnished." 43 CFR 3833.1-2(b)(5) (1984) continues:

(ii) The location of the claims or sites shall be depicted on either a topographic map published by the U.S. Geological Survey [GS] or by a narrative or a sketch describing the claim or site with reference by appropriate tie to some topographic, hydrographic, or man-made feature. ^{3/} Such map, narrative description, or sketch shall set forth the boundaries and position of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or mineral interests in such lands to identify and locate the claims or sites on the ground.

(iii) More than one claim or site may be shown on a single map or described in a single narrative or sketch if they are located in the same general area, so long as the individual claims or sites are clearly identified * * *.

In further explanation of the requirement 43 CFR 3833.1-2(b)(6) and (7) state:

(6) In place of the requirements of paragraph (b)(5) of this section, an approved mineral survey may be supplied. A mining claim described by legal subdivisions, section, township, range, meridian and State fulfills the requirements of paragraph (b)(5) of this section.

(7) Nothing in the requirements for a map and description found in this section shall require the owner of a claim or site to employ a professional surveyor or engineer. ^{4/}

^{3/} The most common scales for GS topographic maps are 7.5 minute (1 inch equals 2,000 feet) and 15 minute (1 inch equals approximately 1 mile).

^{4/} This description requirement was previously embodied in 43 CFR 3833.1-2(c) (1982) which stated:

"(6) For all claims or sites located on surveyed or unsurveyed land, either a topographic map published by the U.S. Geological Survey on which there shall be depicted the location of the claim or site, or a narrative or sketch describing the claim or site with reference by appropriate tie to some topographic, hydrographic or man-made feature. Such map, narrative description or sketch shall set forth the boundaries and positions of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or the mineral interests in such lands to identify and locate the claim on the ground. More than one claim or site may be shown on a single map or described in a single narrative or sketch if they are located in the same general area, so long as the individual claims or sites are clearly identified; and

"(7) In place of the requirements of paragraphs (c)(5) and (6) of this section, an approved mineral survey may be supplied.

Thus, the regulations clearly set forth the type of information that would satisfy the description requirement.

This Board has held that mining claimants must file a map, narrative, or sketch depicting the location of the claim. George Phil Martinez, 51 IBLA 330 (1980); Robert H. Lawson, 48 IBLA 93 (1980). See Walter Everly, 52 IBLA 58 (1981) (BLM may require a mining claimant to supplement his initial filing of recordation information with a description of the lands in his claims).

The regulations at 43 CFR 3833.4 make clear the consequences of a failure to file a claim description in accordance with 43 CFR 3833.1-2(b). Therein, the regulations state:

(b) The failure to file the information required in §§ 3833.1-2(b), 3833.2-1(c), 3833.2-2(a) and (b) or 3833.2-3(b) and (c) shall not be deemed conclusively to constitute an abandonment of the claim or site, but such information shall be filed within 30 days of receipt of a decision from the authorized officer calling for such information. Failure to file such information within the time allowed by decision shall cause the filing to be rejected by a decision appealable under the procedures of Part 4 of this title. Final affirmance of such rejection for failure to file such information shall be deemed conclusive evidence of abandonment of the mining claim, mill or tunnel site and such mining claim, mill or tunnel site shall be void.

Our review of the record in this case reveals the document filed by appellants in July 1981 was sufficient to satisfy the description requirement of 43 CFR 3833.1-2. The map or sketch submitted is on a scale of approximately 1 inch equals 1/2 mile, and it depicts the claims, drainages, and section lines. While the record contains an affidavit from Nichols stating the "map" provided by the Patrins "will also not help determine claim corner locations," we note Nichols' claim investigation was undertaken in 1980, prior to submission of the "map." There is no evidence that an unsuccessful attempt to identify and locate the claims was made subsequent to submission of the "map." In Nichols' opinion the "map" would not help him locate claim corners; however, we believe it is of adequate detail that one could use it to identify and locate the claims on the ground. The regulations specifically state there is no requirement the claimant employ a professional surveyor or engineer to produce a map.

We find that the Patrins' failure to provide a more detailed description of their claims was an insufficient ground to declare their claims abandoned and void, since the July 1981 document was adequate to satisfy the recordation regulation. 5/

fn. 4 (continued)

"(8) Nothing in the requirements for a map and description found in this section shall require the owner of a claim or site to employ a professional surveyor or engineer."

5/ While this case was on appeal, appellants apparently relocated these claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

R. W. Mullen
Administrative Judge

